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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 222

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

STATE OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

J. A. A. BURNQUIST,
Attorney General of Minnesota,
JOHN A. WEEKS,
Assistant Attorney General of Minnesota,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 222

STATE OF MINNESOTA,
Respondent,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant

MOTION OF RESPONDENT TO DISMISS APPEAL.

Comes now the respondent in the above entitled cause, by its counsel of record, and asks that the appeal herein be dismissed.

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STATE OF MINNESOTA IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

ILLINOIS CENTRAL RAILROAD COMPANY,

Appellant

GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The origin of the controversy involved in the within case is sufficiently stated in appellant's jurisdictional papers.

Appellant contends the United States Supreme Court has jurisdiction of this suit by reason of Section 237, Judicial Code, as amended, 28 U. S. C., Section 344 A, which provides for the review of a final judgment or decree in any suit in the highest court of a State where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution and the State court's decision is in favor of its validity.

The statute under consideration was Section 2246, Mason's Minnesota Statutes of 1927, the so-called "Railroad Gross Earnings Tax Law." However, the statute itself was not subject to attack, but the computation of a tax under the statute.

The system of gross earnings taxation as applied to transportation companies violates no provision of the State or Federal constitution.

State v. *Wells-Fargo Co.*, 146 Minn. 444, 179 N. W. 221;
State v. *Pullman Co.*, 146 Minn. 458, 179 N. W. 224;
U. S. Express Co. v. *Minnesota*, 223 U. S. 335.

The Minnesota Supreme Court in its decision in the within case, *State* v. *Illinois Central Railroad Company*, 284 N. W. 360, said:

> "Defendant assails the Burlington formula as repugnant to state and federal constitutional provisions. If computation of defendant's credit balances from the interchange of freight cars with railroads operating in this state according to the said formula or method reaches accuracy more nearly than any other, all constitutional objections to its use vanish. That such credit balances constitute gross earnings of a railroad has been settled law since 1908. State *v.* Minnesota & International Ry. Co., 106 Minn. 176, 118 N. W. 679, 1007, 16 Ann. Cas. 426; State *v.* Great Northern Ry. Co., 163 Minn. 88, 203 N. W. 453.
>
> "The defenses held not valid on the first appeal do not raise any constitutional question, as we see it, but merely fact issues. • • •"

And in the same case, in its opinion of June 16, 1939, the court said:

> "• • • It having been found that the Burlington formula for computing the tax on freight car per diem earnings was proper, and that the one proposed by defendant 'is not a better formula than the Burlington' it follows that the tax computed according to the Burlington formula violates no provision of the constitution of this state, and we are unable to see that the 14th amendment or any other provision of the federal constitution is violated by the judgment rendered."

Section 237, Judicial Code, as amended, is the only authority for taking a suit to the Federal Supreme Court from the highest court of a State, and the right to review the decision of a State court exists only in cases strictly within its terms.

Martin v. *Hunter's Lessee*, 1 Wheat. 304, 327, 333, 4 L. Ed. 97;

Cohens v. *Virginia*, 6 Wheat. 264, 379, 5 L. Ed. 257;

Roller v. *Murray*, 234 U. S. 738, 34 S. Ct. 902, 58 L. Ed. 1570.

The court should decline jurisdiction whenever it appears that the constitutional question presented is not, and at the time of granting the writ, was not, substantial in character.

Zucht v. *King*, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194.

Although a record may present in form a Federal question, a motion to dismiss will be allowed where it plainly appears that the Federal question is of such an unsubstantial character as to cause it to be devoid of all merit and therefore frivolous.

Deming v. *Carlisle Packing Co.*, 226 U. S. 102, 33 S. Ct. 80, 50 L. Ed. 140.

The Minnesota court repeatedly stated that there was no constitutional question involved and that if the tax arrived at by the Burlington formula adopted was a fair approximation or reached accuracy more nearly than any other, any constitutional objection vanished, and decided the question entirely upon non-Federal grounds.

Where the State court "rested its judgment upon a non-Federal ground adequate to support it, the existence of a Federal question is of no significance."

Bilby v. *Stewart*, 246 U. S. 255, 38 S. Ct. 264, 62 L. Ed. 701;

People ex Rel. Doyle v. *Atwell*, 261 U. S. 590, 43 S. Ct. 410, 67 L. Ed. 814.

This is the rule even though the Supreme Court might think the position of the State court an unsound one.

Klinger v. *Missouri*, 13 Wall. 257, 20 L. Ed. 635.

Decisions of State courts based on local laws not involving constitutional questions are not reviewable in the Federal court.

Live Oak Water Users' Ass'n v. *Railroad Commission of the State of California*, 269 U. S. 354, 46 S. Ct. 149, 70 L. Ed. 305.

The courts are left with a wide range of legislative discretion, notwithstanding provisions of the 14th amendment to the Federal Constitution, and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts.

Arizona Employers' Liability Cases, 250 U. S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A. L. R. 1537.

A decision of a state court that the formalities required by the tax laws were fully observed does not appear a Federal question when the contention is not that the statutes are unconstitutional, but that the manner of their observance was a denial of due process of law; "in other words, that the statutes had not been complied with."

French v. *Taylor*, 199 U. S. 274, 26 S. Ct. 76, 50 L. Ed. 189.

When the constituted authority of the state undertakes to assert the taxing power, and the validity of its action is brought before the Federal Supreme Court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.

Green v. *Frazier*, 253 U. S. 233, 40 S. Ct. 499, 64 L. Ed. 878.

The question whether or not a certain interest in an inheritance tax matter was correctly subjected to the tax is purely a state question, not reviewable by the Federal Supreme Court on writ of error to a state court.

Nickel v. *Cole*, 256 U. S. 222, 41 S. Ct. 467, 65 L. Ed. 900.

Where, in a suit to enjoin the collection of taxes on a bridge built under authority of an Act of Congress, the power of the state to tax the bridge is not denied, but ob-

jection is made only to the method of taxation under the state laws, a Federal question is not present.

St. Joseph, etc. R. Co. v. *Steele*, 167 U. S. 659, 17 S. Ct. 925, 42 L. Ed. 315.

Where a state law is admitted to be valid, and the only question is whether it has been correctly construed, the Federal Supreme Court has no jurisdiction.

Commercial Bank v. *Buckingham*, 5 How. 317, 12 L. Ed. 169.

A decision of the state court resting upon the construction and not upon the validity of a statute of the state does not present a Federal question.

Grand Gulf R., etc., Co. v. *Marshall*, 12 How. 165, 13 L. Ed. 938.

Ferry v. *King County*, 141 U. S. 668, 12 S. Ct. 128, 35 L. Ed. 895.

Snell v. *Chicago*, 152 U. S. 191, 14 S. Ct. 489, 38 L. Ed. 408.

A Federal question does not arise where the claim is made that a state statute is inconsistent with the power of Congress to regulate commerce throughout the states, and the highest court of the state holds that the statute was intended to apply and applied only to domestic transportation.

Erie R. Co. v. *Purdy*, 185 U. S. 148, 22 S. Ct. 605, 46 L. Ed. 847.

The construction given a state statute by the highest court of the state will as a general rule be followed by the Supreme Court in determining its jurisdiction to consider a case on the ground that a Federal right is involved.

Baccus v. *Louisiana*, 232 U. S. 334, 34 S. Ct. 439, 58 L. Ed. 627.

The Federal Supreme Court when dealing with the constitutionality of state statutes challenged under the Fourteenth Amendment to the United States Constitution accepts the meaning of such statutes as construed by the highest court of the state.

Farncomb v. *Denver*, 252 U. S. 7, 40 S. Ct. 271, 64 L. Ed. 424.

The general rule of decision is that this court will follow the adjudication of the highest court of a state in the construction of its own statute.

McElvaine v. *Brush*, 142 U. S. 155, 12 S. Ct. 156, 35 L. Ed. 971.

The Federal Supreme Court will adopt state courts' construction of state tax law.

Saltenstall v. *Saltenstall*, 276 U. S. 260, 48 S. Ct. 225, 72 Fed. 525.

The action of a state comptroller in determining for the purpose of taxation the amount of capital stock of a foreign corporation incorporated within the state does not appear a Federal question.

New York State v. *Roberts*, 171 U. S. 658, 19 S. Ct. 58, 43 L. Ed. 323.

While not controlling, the opinions of the state trial supreme court that no Federal question exists are entitled to considerable weight and respect.

The certificate of the chief justice and the order allowing the appeal is not determinative in regard to the existence of a Federal question.

Rector v. *City Deposit Bank Co.*, 200 U. S. 405, 26 S. Ct. 289, 50 L. Ed. 527.

There should be some limitation upon the rule established in *King Mfg. Co.* v. *Augusta*, 277 U. S. 100.

It is respectfully urged that if some attention is not given to the views expressed by the dissenting justices in this last mentioned case, the United States Supreme Court will be the ultimate tribunal of all controversies involving municipal ordinances, administrative orders, and tax adjudications.

WHEREFORE, Respondent respectfully submits that the Supreme Court of the United States deny jurisdiction upon appeal to review the judgment in this suit.

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